

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

| | | |
|--------------------------|---|--------------------------|
| MATTHEW J. NASUTI |) | |
| Plaintiff |) | |
| |) | |
| v. |) | C.A. NO. 09-cv-30183-MAP |
| |) | |
| CATHERINE D. KIMBALL, |) | |
| JOHN TARLTON OLIVIER and |) | |
| VALERIE S. WILLARD, |) | |
| Defendants |) | |

MEMORANDUM AND ORDER RE:
REPORT AND RECOMMENDATION WITH REGARD TO
DEFENDANTS' MOTION TO DISMISS
(Dkt. Nos. 12 & 19)

June 29, 2010

PONSOR, D.J.

I. INTRODUCTION

Plaintiff, Matthew J. Nasuti, ("Plaintiff") has brought suit against Defendants, employees of the Louisiana Supreme Court, alleging that a press release announcing Plaintiff's voluntary resignation from the Louisiana Bar was posted on Defendants' website in such a way as to give persons searching for Plaintiff's name on internet search engines the impression that he had been permanently disbarred from the practice of law in Louisiana. The complaint asserts claims of defamation and violation of Plaintiff's due process rights under the Fourteenth Amendment.

Defendants Valerie S. Willard and John Tarlton Olivier

have moved to dismiss the complaint pursuant to Fed. R. Civ. P. 12(b)(2), (3), and (6), asserting lack of personal jurisdiction, improper venue, and failure to state a claim upon which relief may be granted.¹ (Dkt. No. 12.) The Motion to Dismiss was referred to Magistrate Judge Kenneth P. Neiman for a Report and Recommendation.

On February 1, 2010, Judge Neiman issued a recommendation to the effect that Defendants' motion should be allowed. (Dkt. No. 19.) Judge Neiman grounded his decision on two alternative bases, finding: (1) that the exercise of personal jurisdiction over Defendants in this case would not comport with principles of due process, and (2) that Plaintiff had failed to set forth sufficient factual allegations in the complaint to support the merits of either his defamation claim or his civil rights claim.² Plaintiff filed a timely objection to the Report and Recommendation. (Dkt. No. 20.)

Upon de novo review, and after consideration of Plaintiff's objections, the court will adopt the Magistrate

¹ Claims against Chief Justice of the Louisiana Supreme Court, Catherine D. Kimball, have previously been dismissed on judicial immunity grounds. (See Dkt. Nos. 4 & 16)

² In light of these holdings, Judge Neiman found it unnecessary to address Defendants' alternative argument that venue was improper.

Judge's recommendation in part and allow the Defendants' Motion to Dismiss.

II. BACKGROUND

The facts of the case are set forth in detail in the Report and Recommendation at pages 3-5. The essential facts are not in dispute. In 2004, Plaintiff voluntarily resigned from the practice of law in the State of Louisiana. Thereafter, the Louisiana Supreme Court added a posting to its website entitled "NEWS RELEASE # 052" announcing, inter alia, its acceptance of Plaintiff's resignation.

In 2009, Plaintiff and at least one other person conducted searches for Plaintiff's name on Google and other internet search engines. Among the results generated by these searches appeared the following text: "Matthew J. Nasuti. Permanent Disbarment Ordered." The quoted text was derived from the 2004 press release appearing on Defendants' website. Plaintiff contacted Defendants about the misleading results, but Defendants, maintaining that the search engines were misinterpreting the press release, refused to redraft the press release, remove his name from the website, or publish an apology or a retraction.

III. DISCUSSION

A. Personal Jurisdiction.

In his Report and Recommendation, the Magistrate Judge

found that the exercise of personal jurisdiction over Defendants would be improper. Plaintiff objects to this finding on two grounds. First, Plaintiff takes issue with the statement, made in the context of the "reasonableness" prong of the court's due process analysis, that "all of the evidence" relating to Plaintiff's claims "is located in Louisiana." (Dkt. No. 19, Report and Recommendation, 13.) Plaintiff argues at length that at least one piece of evidence -- Defendants' website -- is located in the State of New York. (Dkt. No. 20 at 2-4.)

Plaintiff may be correct that www.lasc.org, the domain name attached to Defendant's website, is legally cognizable as property located in New York. See 15 U.S.C. § 1125(d)(2) (providing that domain names are legally "located" wherever "the domain name registrar, registry, or other domain name authority that registered or assigned the domain name is located"). However, the mere fact that some modicum of evidence is present in New York, rather than Louisiana, fails to undermine Judge Neiman's conclusion that, in the totality of circumstances presented, the exercise of personal jurisdiction over these Defendants in Massachusetts would be unreasonable.

Second, Plaintiff objects to Judge Neiman's failure to find specific jurisdiction over Defendants under the

so-called "effects test" established by the Supreme Court in Calder v. Jones, 465 U.S. 783, 789 (1984). Under Calder, a plaintiff may establish purposeful availment by showing that a defendant's wholly out of state act was "calculated to cause injury" to the plaintiff in the forum state. Noonan v. Winston Co., 135 F.3d 85, 90 (1st Cir. 1998) (citing Calder, 465 U.S. at 791). Plaintiff posits that once Defendants were served with a cease and desist order, they "had actual knowledge that their actions were directly causing injury to [him] in Massachusetts," and that this knowledge was sufficient to establish jurisdiction under Calder. (Dkt. No. 20, Pl.'s Response to the February 1, 2010 Report and Recommendation, at 5 (emphasis in original).)

Calder does not assist Plaintiff. Under Calder, more is required than an allegation that Defendants knew that Plaintiff lived in the forum state when they acted. To show that an act was "calculated to cause injury" in the forum state, a plaintiff must plead facts sufficient to show that a defendant "expressly aimed" its conduct at the forum, thereby making the forum "the focal point of the tortious activity". IMO Indus. v. Kiekert AG, 155 F.3d 254, 265 (3d Cir. 1998). No such facts are alleged here. Plaintiff does not claim that Defendants attempted to have their news

release published in Massachusetts or that the release made any reference to Massachusetts or Plaintiff's practice there. Accordingly, Calder is inapposite.

B. Merits.

In the second part of the Report and Recommendation, the Magistrate Judge recommends that Plaintiff's complaint be dismissed for failure to state a claim upon which relief may be granted. In light of the conclusion that personal jurisdiction over Defendants is lacking here, the court finds it unnecessary to reach this alternative ground for dismissal. Therefore, although the court has considerable doubts regarding the viability of Plaintiff's claims, it declines to adopt the portion of the Report and Recommendation dismissing the complaint for failure to state a claim upon which relief may be granted.

IV. CONCLUSION

For the foregoing reasons, upon de novo review, the Report and Recommendation of Magistrate Judge Kenneth P. Neiman dated February 10, 2010 (Dkt. No. 19) is hereby ADOPTED in part. Defendants' Motion to Dismiss (Dkt. No. 12) is hereby ALLOWED. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor
MICHAEL A. PONSOR
U. S. District Judge

